

Libre Commons = Libre Culture + Radical Democracy

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We have been encouraged of late to see more critical reflection and commentary about libre culture, Creative Commons and the immaterial commons coming up on our screens (Berry 2005; Dvorak 2005; Hill 2005; Nimmer 2005; Orłowski 2005; Tóth 2005). In this article, we once again aim to foment and contribute to this discussion. We maintain that the politicization of the project of the commons is a positive development and we look forward to more agonistic debate. We reject the silencing tactics favored by some, who seem to imply that it would best to avoid debating libre culture and, instead, be content with playing ‘follow my leader’ or ‘Simon says...’. So many unspoken words spell out a problem in our view, rather than a solution.

It's not surprising that those who question the value of contestation and dissensus would read our previous comments on the creative commons as negative and destructive (Berry & Moss 2005). This was not our intention. We wanted an article on the creative commons to be nothing but positive and constructive. Why? Because we think that the only way to consolidate the power and realize the promise of libre culture is through the creation of a radical democratic project. Such a project rejects all bureaucratic tendencies and silencing tactics. It is premised on the *political* as much as anything else, where the political is understood in its specificity, as a field of agonistic contestation and circuitous re-articulation. Radical democracy offers a positive vision for libre culture, and a constructive response to the question of how libre culture can deepen and extend itself. It is about a multiplicity of singular networks of struggle operating on the terrain of civil society who may seek strategic alliances and articulate as an active political subject under a ‘common’ radical democratic (counter-hegemonic) project.

This stretches libre culture out in myriad directions, to form multiple points of passage with other singularities who are now struggling against various power asymmetries and injustices.

In this article, then, we want to introduce libre culture to radical democracy. [1] We hope that a meeting between the two will lead to a mutually beneficial engagement. This hope and vision here goes under the name of the *libre commons* to differentiate it from other groups and proposals (such as Creative Commons). Libre culture is presently being reduced to economic, moral, technological or legal logics, all of which (in different ways) claim to circumvent the political and move us along effortlessly in straight, non-political lines (Berry 2004). In contrast, *libre commons* (= radical democracy + libre culture) makes room for plurality, dissensus and curvature — the *raison d'être* of the political.

In our view, thinking about libre culture with radical democracy is long overdue. True, Micheal Hardt and Antonio Negri have recently penned: “Our approach to understanding the democracy of the multitude... is an open-source society, that is, a society whose source code is revealed so that we can all work collaboratively to solve its bugs and create new, better social programmes” (Hardt & Negri 2004). We concur, needless to say, with the sentiment. Libre culture’s democratic effects could be far-reaching. But we question the prevalent idea that democracy is an essential part of libre culture and something that will automatically flow from it. Libre culture can be understood in myriad ways and move in various directions. Not all of these directly are particularly democratic, neither are they (for that matter) necessarily counter to the present. Insofar as libre culture eschews the political, we argue, it is not likely to be very democratic in its effects at all. In the light of this, it is unclear to us what Hardt and Negri actually mean when they invoke the term “open-source”. For one thing, their delphic usage ignores a number of significant internal differences in libre culture between, say, Free Software, Open Source and the Creative Commons, or between eminent spokesmen like Richard Stallman, Eric Raymond and Lawrence Lessig. Such differences, from our anti-essentialist perspective, are critical to the future direction of libre culture. And it is for this reason that we here wish to defend an alternative radical democratic position. In short, this is the idea of the libre commons.

1. Anti-Political Motifs

Our last discussion of the commons took the form of a critique aimed squarely at the creative commons (*On the Creative Commons: A Critique of the Common without Commonalty*). We argued that, despite the rhetoric, the creative common was a simulacra of a commons that was instantiated in private property, contract and possessive individualism. The creative commons in no way replaced commonalty. Rather than offering us an alternative, the creative common movement is a continuation of the process by which private property and a neo-liberal worldview colonizes all aspects of life. Despite its achievements, the creative commons has a depressing inability to see beyond markets and money as steering media.

So our previous article was an invitation to think about libre culture in a more critical and political way. We wanted (and still want) to provoke contestation and open up libre culture to consider all possibilities. Unfortunately, many of the responses we received did not welcome the politicization of the issue. They found it unhelpful, rather than helpful. Why? The responses were varied and came from different directions, but one striking thing that they all shared were an insidious anti-political tendency. Again and again, we found the anti-political logics of economics (like certain currents within the creative commons or open-source movement), moral consensus (like certain currents with the Free Software Foundation), and, of course, law (as a key nodal or obligatory passage point for libre culture, more generally). But nowhere do we find the political. In this respect, the reaction we received to our last article reminded us of Carl Schmidt's perspicuous remarks on modern liberalism. 'In a very systematic fashion', so Schmidt argues, 'liberal thought evades or ignores politics and moves instead in a typical always recurring polarity of two heterogonous spheres, namely ethics and economics' (Mouffe 2000).

Many people took umbrage with our previous argument against the creative commons for undermining the libre culture movement. One person emailed, "I strongly believe that we must present a united front...you must be prepared to compromise". It was argued, in particular, that our 'theoretical critique' made little sense strategically and practically. If anything, it would damage the process whereby libre culture was now broadening itself out and developing a wider appeal. It is quite right, in our view, to question the value of overly abstract

theorizing, to make hurtful quips about armchairs, when theory is entirely detached from practical intent and the reality of social (or, more accurately, socio-technical) struggle. Most of us share, despite our other differences, a hope that the project of libre culture will deepen and extend. But the salient question is how, by which machinery, and in which direction. In our view, the creative commons has widened itself out in such a way that it now bears little resemblance to the underlying arguments that should be made for libre culture. By opening itself up to a broad membership, especially by courting private industry and property, it is following an economic market logic that compromises libre culture and encourages multinational corporations to take centre stage. It has taken the same path as ‘open-source’. (Eric Raymond, of course, distinguished the term ‘open source’ from that of ‘free software’ because the latter term was unappealing to private industry.) This results in inevitable dilemmas for libre culture in terms of co-option and compromise, as we argued in our last article on the subject.

By what other means can libre culture deepen and extend itself? Well, we were interested to read the intervention by Hill (2005). Thankfully, this article moved away from the narrow economic logic of the creative commons and open source. Hill has another agenda, but one that is no less familiar to those versed in debates over libre culture. For him, the creative commons had lost touch with a moral set of principles that allowed us to distinguish between (what he termed) ‘right’ and ‘wrong’. Some of Hill’s criticisms of the Creative Commons tally with our previous remarks. But we are none the less skeptical of his proposed alternative. What he does, in effect, is displace the problem with the creative commons to a different level. Rather than turn to economics, he turns to the order of morality. By an over-hasty fetishisation of technology, and the naive acceptance of human rights in a metaphysical sense, there is a lack of grounding in real concrete political action. His arguments are again anti-political. They attempt to close down the space for contestation, too, but this time in the name of an ultimate and invariable ‘good’ or ‘right’.

This indicates a more general problem with many of the arguments of the Free Software Movement: they are overwhelmingly made within a *moral* register. Claims to authority are made by reference to *a priori* human rights divorced from the political realm. Decisions are made between “right” and “wrong” (note the quite deliberate *scare* quotes) on the basis of a supposedly shared morality. There is then no ground for further discussion as the terms of the decision have already

been set *a priori*. This has dangerous consequences. It closes down possibilities; it prevents alternative articulations. They are all variously labeled dangerous, evil or wrong. Counter-arguments can be neatly ignored and an ostensible moral consensus within the free culture “community” maintained. We have assertions made to a ‘right to...’, not political claims to struggle to bring into effect these rights and liberties. The discourse of rights, used in such a way, does not encourage political thinking. Instead, it tends to close down debate to a simplistic friend/enemy binary.

2. The Libre Commons

The alternative we want to suggest to broadening and extending libre culture is the radical democratic project of the libre commons. We believe that a political approach should be sought that channels dissent within the movement of libre culture towards a vibrant political space of agonistic debate, rather than an antagonistic friend/enemy relation. Our position is that no movement can remain legitimate without a political component; that is, without realizing the importance of the struggle of groups asserting and contesting their agonistic positions through a political process to reach a decision. This is not a decision to be taken by consensus. Moral consensus merely invalidates the political as it does not allow for opinions to fall outside of its boundaries (Mouffe 2005). When they do, and they will do, they are illegitimate or ignored as ‘foe’. We argue that the very rights that libre culture movements are calling for should be substantiated through political democratic means and agonistic debate.

This offers a different way — a ‘third way’ if you like — for libre culture to broaden itself out and deepen. But this approach is no less productive and constructive than any other. Indeed, we believe it to be more so. It is about a multiplicity of singular networks of struggle operating on the terrain of civil society. These networks can seek alliance and articulate as an active political subject under a ‘common’ and counter-hegemonic radical democratic project. The common that they articulate under is an ‘empty place of power’ and is therefore truly democratic. It is something to be articulated and re-articulated, made and re-made, by political means. It is not reduced to (possessive individualist) economic or (consensus-based) moral assumptions. It is vision where libre culture connects and

finds points of passage with other singularities (machines of struggle) who are coming up against various other power asymmetries.

Strategic alliances can here be drawn through political means against the unremitting exploitation of the 'common' pool of immaterial labour. Which is to say, it is about time that libre culture meaningfully engaged with various other struggles against the commodification of knowledge, as they are expressed, for example, in terms of native knowledge, farmers, the sick, and workers more generally. This will require an articulation of the dangers and threats from commodification from knowledge expressed in terms that can be valued and understood by a broader constituency. As libre culture becomes more inclusive, acquiring new members, allies and connections, it grows more political. It clarifies, with ever greater sophistication, the various causes of the complaint, and what is needed to remedy it. It is no longer good enough to limit the demands to a technical concern for computer programming or the freedom to make music. Rather, these issues flow out across a number of different planes. There is a need to build alliances across these different struggles. This may well involve the uncomfortable truth that a cozy moral consensus is not reached. But political alliances can be drawn and partial closures fixed under the common, as a counter-hegemonic project (Laclau & Mouffe 2001).

Fragmentation and contestation, rather than being seen as a weakness, is a positive political moment. Through agonistic debate there is the possibility for the development of a multi-perspectival approach to instantiating a new form of commons for the twenty-first century. Debate is never closed absolutely, for there is never a full reconciliation. There is only a temporary hegemonic closure which can continue to be countered or rearticulated. One condition of this is through the development of 'the common' as the empty signifier and place of power around which numerous diverse groups can democratically mobilize. The common is to be articulated through the creation of alliances between individuals and groups (i.e., singular machines of struggle) formed through political dialogue and action.

3. Libre Commons 'Licences'

Up to this point we have been oddly silent on law. Somehow or other we have got a fair way through an article on libre culture without really mentioning law

directly. Throughout this article, we have argued along with radical democracy for a turn away from the anti-political language of economics, technology and morality. This means that legal rights understood as *a priori* human rights would fall foul, too, since they presuppose the (all too Western and imperialistic) idea of a universal moral consensus. We reject the ideas of a universal human nature, of a universal canon of rationality, as well as possibilities of a universal condition of truth. But rejecting the notion of human rights as given or universal does not mean that do not value rights *per se*. Quite the contrary. They can be extremely useful strategic devices in the political field.

We would also support other measures that pertain to legal rights. “Why not have a new legislative agenda for a ‘global commons’/ Let’s also prevent the world-wide drift to unitary (i.e., US) intellectual property rights”. Like you, we want all this and more from the law. But even so, we do not forget that it is only through political struggle that rights are constructed, invested with meaning and given any force. Yes, being political can be arduous and frustrating; politics often moves circuitously, rather than in a straight line. Be this as it may, rights are constructed not given, they are the result of political struggle, not assertions of moral orders. There is no way to bypass politics. There is no such thing as *a priori* human rights, just legal promises that we must continually ensure our fulfilled for ourselves and for our friends also. We need, in sum, to always re-articulate rights as democratic and political rights, rather than viewing them as given, universal or reducing them to an individualist framework.

These are the grounds on which we have introduced the Libre Commons licences into the ether, including the *Res Communes* and the *Res Divini Juris* licences. Let’s be clear: these “licences” are politic-democratic devices. We do not claim that they have legal authority. Indeed, our non-legal usage of the term licence has upset some lawyers and the like. They have lectured to us that our use of the term “licence” is ‘wrong’, ‘incorrect’ and ‘contradictory’. It is not surprising that those, who retain power and status by claiming to speak ‘correctly’ and with ‘rectitude’ on other’s behalf, would fear polysemy and flat-out deny our capacity to think or speak otherwise. It is not surprising that those who move in anti-political worlds of straight lines would want to deny our political capacity to contest and multiply meanings.

We want, in contrast, to here be a little more *licentious* with the word licence than the lawyers allow. For those wonks and purists of etymology, with an Oxford

English dictionary at the ready, let us say that for the purposes of the libre commons we are drawing on other connotations of the term. We don't take licence to mean legal permission. Closer to our meaning of license would be licence as in 'poetic license', as in a poetics of knowledge and politics. The meanings proliferate further: 'liberty of action', 'abuse of freedom', 'licentiousness', 'disregard of proprietary', 'irregularity', 'deviation from the norm' and so on. In any case, let us turn to consider the *poetic license* of the libre commons more directly.

Libre Commons Res Communes Licence

The commons is that which is shared in common with others. This can be a resource, such as land or water, that members of "community" own and share. The commons has traditionally been limited to a local community right and to a physical resource such as a forest. But it has also been used to refer to the space of intellectual thought — an 'ideas commons', an 'innovation commons', an 'intellectual commons', a 'digital commons', 'immaterial commons' and inevitably an 'e-commons', 'the public domain' or 'Intellectual Space'. This *Libre Commons Res Communes Licence* commits work that is inscribed with it to a shared common that all can draw from and reuse.

We are, to be clear, using the concept of the commons in an inclusive and positive sense. The commons is shared in common between us (i.e., positive in being 'owned' by us all) and inclusive in that we are all included in being able to use the commons (i.e. inclusive in as much as it includes the human race as a whole). This differs from negative conceptions of 'community' relating to the commons, where the commons is an unowned space, ripe for appropriation and privatization by anyone (i.e. the justification used by corporations for the appropriation of common land).

Res Communes Licence

The *Res Communes* license is designed to reject a state-centred legal construct of a commons (or commons without commonalty) in order to concentrate on creating a common which is shared between us in collective practices (a commons with commonalty).

The 'Commune' or the 'Commonalty' originally meant 'the people of the whole

‘all the King’s subjects’ as opposed to the King, the Nobles or the ‘commons’ in Parliament. We here refer to the commonalty to refer to the global multitude, the people of the whole world.

1. This work is outside of all legal jurisdictions and takes its force and action from the constituent radical democratic practices of the global multitude against the logic of capital.

2. All work that is so inscribed should bear the text ‘(L) 2005 Libre Commons Res Communes License’.

3. As a user of this license the work is available to be shared and used as part of a common creative substrate that is shared between us.

Libre Commons Res Divini Juris Licence

Temples, tombs, religious statues and places were considered to belong to no one because they were in the service of the gods. The impediment to being turned into property was not natural but divine. Following Heidegger’s call that only a God can save us, the God in question is that that can produce a clearing, the possibility of another place, making a different world. Drawn from a concept of Species Being, or a shared common practice such as the General Intellect (i.e. commonalty), works that are contributed to the *Res Divini Juris* are committed to the human species as a whole. Beyond Temporal Law and the liberal legal system, we could think of it as a space of the permanent state of exception.

In this case, the space is one which lies beyond a notion of human ‘ownership’ at all. Instead, due to the sacredness of the space, there should be no attempt to commodify or privatize it. We can think here of the sanctity of human life, the human genome or the great knowledge and literature passed onto us from previous thinkers.

License text

The Res Divini Juris license is designed to so that sacred spaces can be opened up, and offer the possibility of contestation and debate which can discuss matters of public importance as a practical activity. What is endangered under advanced capitalism is a source of resistance. Treating everything as resources makes possible endless disaggregation, redistribution, and re-aggregation for its own sake. This can be seen as a period of de-industrialisation and growth in the communicational and semiotic as generators of surplus value in the period after the second world war. The informational economy has emerged as a moment where capitalism seeks to enclosure cultural texts to maximise profit, the shift

om the consumption of goods to the consumption of experiences.

Alternatively, background practices work by gathering and so bringing things into their own' (i.e. uncovering). The gathering of local practices around things produces temporary, self-enclosed local worlds that can resist the totalising and dispersing effects of the flexible and efficient ordering under capitalism.

1. By using this license you are agreeing to allow your work to be shared as a step on the path of revealing. Within the realm of the gods, the work will contribute to a shared new world of collective practices and networks of singularities operating within a non-instrumental and communal life.
2. All work that is so inscribed should bear the text '(L) 2005 Libre Commons des Divini Juris License'.
3. This license operates under a permanent state of exception. It is a result of radical democratic practices beyond the state.
4. Users of the license are committed to political action and social struggle.

4. Coda

Working assumptions on our part about the likely readership of this paper has made our meeting between libre culture and radical democracy rather one-sided. Rightly or wrongly, we assumed that our readership would know more about libre culture than radical democracy. We have therefore let radical democracy do much of the talking in this article. The result has been more of a monologue than a dialogue. None the less, we began by saying that we hoped a meeting between libre culture and radical democracy would lead to a mutually beneficial engagement. The struggle for the libre commons can, as we have argued throughout, form the basis for a 'common' radical democratic project. But to achieve this, radical democracy needs to engage with libre culture as much as the other way around. So what does thinking about radical democracy along with libre culture mean? Well, this is another topic, another intervention, for another time. A lot could be said, and needs to be said, but let us conclude with one thing that libre culture might say to radical democracy.

As we have argued above, radical democracy underlines the centrality and specificity of the political: that is, agonistic debate and contestation. Relentlessly, radical democracy keeps saying to libre culture: "Don't forget the political by reducing everything to straight lines/ the only way to protect our rights and liberties is by acting politically". But then Libre culture might say, "Fair enough, I accept that I have to act politically and that democratic rights are important/ But where does all this political contestation that you talk of take place?/ Many of the

old ‘public places’ have been privatized, have fallen into disrepair or were just plain miserable/ You’re just not being practical!/ How are we to construct public-political spaces adequate to our time, or much better, how are we to construct untimely spaces, adequate for a possible time to come?”

With radical democracy, we stress the need for plural passage points, for multiplying the forms and modes of democratic agency and subjectivity available in the present. We favor heterogeneity- multiple assemblages of humans and non-humans. We question, to be sure, the liberal idea of a single, homogenous public. This is for the same reason that we have questioned an overly singular and concrete sense of libre culture, and the idea that it can move in straight lines. Meanwhile, however, thinking about radical democracy along with libre culture, gives us reason to look at this through a different optic. This is an optic whose focus has been sharpened through the struggle against the intellectual property regime. Postmodern capitalism, whose chief expressions are the market and the commodification of immaterial labour through intellectual property, brings an endless spinning off and proliferation of the seductively ‘new’ or ‘novel’. On the surface there seems to be the continuous reproduction and valorization of multiple passage points and sites of power. But then as soon as they are produced these passage points are devalued with the next upgrade, the next conceit, the next chance for profit, by in-built obsolescence and patents that are in the danger running out.

Hannah Arendt, in *The Human Condition*, was clear on the importance of the objectivity or thing-character of the world and particularly public space. Along with Arendt, we might say not only does libre culture provide the possibility for widespread experimentation with public socio-technical space, it also ensures that public spaces can (if we want them to) have a relative durability and stability. Common ownership is the basis from which socio-technical space can be protected, and the stability and durability necessary to democratic engagement and agency be ensured (Arendt 1999). Libre culture, to put it bluntly, puts these decisions in public and democratic hands.

Libre Commons licences carry the hope that they can be both a way of rethinking the commons, beyond narrow conceptions of public and private ownership, and also contribute to a stability of creativity, a place where things may be placed outside of the ‘system of needs’, with its rampant exploitation and reduction of all to profit. That this space can become re-thought as a space of the

‘common-wealth’, that is, that all may have access to use the ‘common things’ and productively contribute to the common good. *This, of course, is but one more expression of libre culture’s long overdue political calling.*

Notes

[1] Our understanding of radical democracy follows more-or-less the various writings of Earnesto Laclau and Chantel Mouffe: it is relational rather than essentialist, stresses the agonistic nature of the political and is radical as in far-reaching

More info

<http://www.creativecommons.org>

<http://www.fsf.org>

<http://www.libresociety.org>

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